

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No.: 3:18-cv-00231-MMD-WGC

Order

Re: ECF No. 53

DAVID BURNS,

Plaintiff,

v.

JESSE COX, et al.,

Defendants.

Before the court is Plaintiff's motion seeking leave to file a third amended complaint (TAC) (ECF No. 53) and proposed third amended complaint (ECF No. 48). Defendants filed a notice indicating they do not oppose the motion, except that the TAC still names defendant Clay, who was already dismissed from this action.

"A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1)(A), (B). Otherwise, a party must seek the opposing party's written consent or leave of court to amend a pleading. Fed. R. Civ. P. 15(a)(2).

"The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave to amend need not be given where amendment: "(1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or (4) is futile." *Amerisource Bergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006) (citation omitted).

The proposed TAC is identical to the second amended complaint (SAC) (ECF No. 41), except that it changes the amount of damages sought in the prayer for relief. This is the second

1 time Plaintiff has sought to amend his complaint just to change the amount of damages he seeks
2 in his prayer for relief. The court finds that amendment is not required simply to change the amount
3 of damages sought when the categories of damages sought remain the same. Plaintiff's recovery
4 of damages at trial are subject to proof at that time, and Plaintiff will not be limited to the amount
5 stated in the proposed SAC. Therefore, Plaintiff need not file additional motions to amend simply
6 to increase the amount of damages he seeks to recover.

7 Therefore, Plaintiff's motion (ECF No. 53) is **DENIED**. This action is proceeding on the
8 SAC (ECF No. 41) as outlined in the court's order at ECF No. 40.

9 **IT IS SO ORDERED.**

10 Dated: May 21, 2020.

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William G. Cobb
13 United States Magistrate Judge
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